

Responses to Questions

1) Will the Department of Defense (DoD) use Title 10 forces without the invocation of the *Insurrection Act*?

Response: Unless directed to do so by the President pursuant to his invocation of the Insurrection Act, the U.S. Armed Forces will not suppress an insurrection or rebellion, or enforce the laws of the United States.

2) What is the mission and rules of engagement of any Title 10 service member, specifically, Military Police, who are already deployed in response to protests, and how are they coordinating with State and local law enforcement entities? Are they authorized to carry out arrests and other law enforcement activities? Are they authorized to use lethal force? What is the chain of command? What is their relationship to law enforcement entities?

Response: No active-duty military personnel have deployed in response to protests. In addition, the President has not invoked the Insurrection Act and no mission to suppress an insurrection or rebellion, or to enforce the laws of the United States, has been assigned to DoD. If such a mission is assigned, appropriate mission parameters will be issued to military personnel carrying out the mission.

Any military personnel deployed in response to the current civil unrest were being prepositioned to be prepared for the potential assignment of a mission.

The Standing Rules for the Use of Force (SRUF), (Enclosure L of the Chairman of the Joint Chiefs of Staff Instruction 3121.01B) remain in effect for land- and air-based operations in the United States.

Military personnel assigned to carry out missions pursuant to the Insurrection Act will be issued appropriate mission parameters. Normally, active-duty military personnel executing missions within the United States work closely, and in cooperation, with their Federal, State, and local counterparts.

3) Have any State legislatures requested deployment of the Federal troops to “suppress an insurrection” pursuant to 10 U.S.C. §251, or for any other purpose in relation to the protests?

Response: A State requests that the President exercise the authority granted to him pursuant to 10 U.S.C. §251 whenever there is an insurrection against that State’s government. DoD defers to the Administration to verify whether the President has received any State requests.

4) Will DoD deploy Federal troops to a State where the State either has not requested military support or expressly states that they do not want Federal support? In this situation, to whom would these forces report?

Response: If the President were to exercise his authority pursuant to 10 U.S.C. §252 and issued a lawful order directing the U.S. Armed Forces or National Guard personnel called to Federal Service to enforce the laws of the United States or to suppress a rebellion, DoD is legally obligated to carry out the President's lawful order.

In all situations, active-duty military personnel and operate under the chain of command specified in 10 U.S.C. §162(b).

5) In accordance with 10 U.S.C. §252, do current conditions “make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings? If so, where and why?

Response: The President may exercise the authority granted by 10 U.S.C. §252 when he considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings. DoD defers to the President.

6) In accordance with 10 U.S.C. §253, do current conditions hinder the execution of the laws of [a] State and of the United States...that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law”? If so, please explain why and provide examples? Further, have any State authorities “[been] unable, fail[ed], or refuse[d] to protect th[ose] right[s], privilege[s], or immune[ies], or to give that protection?” Alternatively, where do current conditions “oppose[] or obstruct[] the execution of the laws of the United States or impede[] the course of justice under those laws,” as oppose to State law?

Response: In accordance with 10 U.S.C. §253, the President, by using the militia or the U.S. Armed Forces, or both, or by any other means, may take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it: (1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or (2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws. DoD defers to the President.

7) Pursuant to 10 U.S.C. §254, will DoD only deploy Federal troops following a presidential proclamation ordering people to “disperse and retire peaceably to their abodes within a limited time” before invoking the *Insurrection Act*, as required by law?

Response: In accordance with 10 U.S.C. §254, the President is required to immediately order, by proclamation, insurgents to disperse and retire peaceably to their abodes within a limited time whenever he considers it necessary to use the militia or the armed forces to suppress an insurrection or rebellion or enforce the laws of the United States. On the other hand, 10 U.S.C. §254 does not require such an order prior to deploying military personnel within the United

States – an activity that occurs on a regular basis for a wide spectrum of purposes, including exercises and as part of our nation’s current pandemic response.

8) Are there any circumstances in which DoD envisions deploying combat troops (i.e., not Military Police)?

Response: All military personnel may be used as general-purpose forces to fulfill a wide range of mission requirements.

9) Although we do not believe invoking the *Insurrection Act* is warranted and believe the deployment of Federal forces would be a grave mistake, we remain concerned about the assigned mission and scope in such an event. What are the rules for the use of force for any Title 10 unit that is activated to deploy to respond to protests under the *Insurrection Act*?

Response: No active-duty military personnel or National Guard personnel called into Federal Service will be deployed to respond to protests under the Insurrection Act. The Insurrection Act authorizes the President to use such military personnel to suppress an insurrection or a rebellion, and to enforce the laws of the United States.

a. Will the service members receive training concerning protests, riots, implicit bias, contextual sensitivity, and/or restraint?

Response: In case a President has to invoke the authorities granted by the Insurrection Act, DoD maintains military personnel trained and ready to respond to suppress an insurrection or rebellion, and to enforce the laws of the United States.

b. Will the service members be authorized to use lethal force?

Response: The SRUF remain in effect for land- and air-based operations in the United States. Military personnel are permitted to take action to defend themselves and others within clear limits. In accordance with the SRUF, force is to be used only as a last resort, and the force used should be the minimum necessary. The use of force must be reasonable in intensity, duration, and magnitude based on the totality of the circumstances, to counter the threat. If force is required, non-deadly force is authorized and may be used to control a situation and accomplish the mission, or to provide self-defense of DoD personnel, defense of non-DoD persons in the vicinity if directly related to the assigned mission, or in defense of protected property, when doing so is reasonable under the circumstances. Deadly force is to be used only when all lesser means have failed or cannot reasonably be employed and may only be used in circumstances such as for self-defense of DoD personnel when commanders reasonably believe that a person poses an imminent threat of death or serious bodily harm to DoD personnel.

c. Will they be armed with weapons? Will those weapons carry live rounds? What non-lethal riot control tools will be used?

Response: The President has not invoked the Insurrection Act and no mission to suppress an insurrection or rebellion, or to enforce the laws of the United States, has been assigned to DoD.

If such a mission is assigned, appropriate mission parameters will be issued to military personnel carrying out the mission.

d. What is their designated mission?

Response: The President has not invoked the Insurrection Act and no mission to suppress an insurrection or rebellion, or to enforce the laws of the United States, has been assigned to DoD. If such a mission is assigned, appropriate mission parameters will be issued to military personnel carrying out the mission.

Any military personnel deployed in response to the current civil unrest were being prepositioned to be prepared for the potential assignment of a mission.

e. Will they be authorized to make arrests, and, if so, under what circumstances?

Response: The President has not invoked the Insurrection Act and no mission to suppress an insurrection or rebellion, or to enforce the laws of the United States, has been assigned to DoD. If such a mission is assigned, appropriate mission parameters will be issued to military personnel carrying out the mission.

f. What is their chain of command?

Response: In all situations, active-duty military personnel and operate under the chain of command specified in 10 U.S.C. §162(b).

g. What is their relationship to State and local law enforcement entities?

Response: The President has not invoked the Insurrection Act and no mission to suppress an insurrection or rebellion, or to enforce the laws of the United States, has been assigned to DoD. If such a mission is assigned, appropriate mission parameters will be issued to military personnel carrying out the mission. Normally, active-duty military personnel executing missions within the United States work closely, and in cooperation, with their State and local counterparts.

h. What will their relationship be to National Guard personnel on State active-duty status?

Response: The President has not invoked the Insurrection Act and no mission to suppress an insurrection or rebellion, or to enforce the laws of the United States, has been assigned to DoD. If such a mission is assigned, appropriate mission parameters will be issued to military personnel carrying out the mission. Normally, active-duty military personnel executing missions within the United States work closely, and in cooperation, with their State and local counterparts, including National Guard personnel operating at the direction of their State in a State active-duty status.

i. If military personnel are alleged to have used excessive force or engaged in other abuses, will they be subject to civilian law, depending on their chain of command, or the Uniformed Code of Military Justice?

Response: Active-duty military personnel would be subject to the Uniform Code of Military Justice. National Guard personnel operating at the direction of their State in a State active-duty status or in a duty status pursuant to Section 502(f) of Title 32, U.S. Code, would be subject to their State's code.

10) If National Guard personnel are federalized for this mission, will this take resources away from ongoing COVID-19 pandemic response activities?

Response: No.